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October 4, 2011

VIA E-FILING

Honorable E. Thomas Boyle
United States Magistrate Judge
United States District Court
Eastern District of New York
U.S. Courthouse
100 Federal Plaza
Central Islip, NY 11722

Re: Robinson v. Troyan
CV 07-4846 (JS) (ETB)

Dear Judge Boyle:

This firm represents the plaintiff in the above matter. I am in receipt of defendant's counsel letter dated October 3, 2011.

First, defendant would not be making a 12(b)(6) motion because that is a motion made prior to the time that an answer is filed and an answer has been filed.

With respect to the merits of the motion, the top of the Complaint states "Form to be used by a prisoner filing a complaint under the Civil Rights Act 42 U.S.C. §1983."

The complaint specifically instructs plaintiff to list the defendant and his employer which Mr. Robinson does. Finally, in the statement of claim it states not to cite to any statutes or cases.

The statement of claim repeatedly indicates that Mr. Robinson was assaulted, punched and kicked in the face by Mr. Troyan.

Mr. Troyan has full knowledge that his conduct was not negligent in nature and that Mr. Robinson was seeking damages for Mr. Troyan's intentional conduct which permits punitive damages.

FRANZBLAU DRATCH, P.C.
A PROFESSIONAL CORPORATION

Hon. Thomas J. Boyle, U.S.M.J
October 4, 2011

Mr. Robinson requests monetary damages for the "cruelty, pain and suffering, mental anguish and physical abuse" by Mr. Troyan.

Discovery was certified complete in this case since December of 2009 by the Court. Although, Mr. Middleton just was recently retained, defendant's former counsel had ample opportunity to file motions to dismiss the matter, but chose not to do so.

With a jury selection to begin at the end of this month, plaintiff would object to the defendant filing any motions at this late stage or the need for a telephone conference call.

As for plaintiff's demand, plaintiff is always willing to engage in settlement discussions to resolve this matter. Plaintiff has begun the process by giving the defendant a demand. It would be the defendant's turn at this time. If Mr. Middleton would like to engage the Court in the settlement process, plaintiff has no objection in that regard.

Respectfully yours,

BRIAN M. DRATCH

BMD:tp

cc: Scott Middleton